

Regular Darkhast No. 3/2018

Kanhaiyalal vs Jagdev

CNR No. MHYA 190000422018

Order below Exh-34

1. The present application has been filed by the judgment debtor under Section 151 of the Code of Civil Procedure, seeking the dismissal of present execution Petition, which has been filed by the decree holder for the execution of the judgment and decree passed in Regular Civil Suit No. 45/2013.
2. It is stated by the judgment debtor that, the decree holder has incorrectly mentioned the boundaries of land Gat No. 32/3 in the execution petition, which does not correspond to the actual property under dispute. The judgment debtor further contends that the boundaries of land described in the execution petition belongs to third party. It is further stated by the judgment debtor that the 7/12 land extract for Gat No. 32/3 does not reflect the decree holder's ownership, and therefore, execution of the decree would be improper. Based on these grounds, the judgment debtor has requested that the execution petition be dismissed.
3. The decree holder has filed say and opposed the application, stating that the execution petition has been filed for the enforcement of the judgment and decree passed in R.C.S No. 45/2013. Therefore, the present application is devoid of merit and liable to be dismissed. On these grounds decree holder prayed to reject the application.
4. Read application and say. Perused the record. Heard both sides.
5. The learned counsel for the judgment debtor argued that the execution petition should be dismissed on account of the discrepancies in boundaries of land Gat No. 32/3 in respect of which execution is filed. It

is further argued that executing the decree without resolving these inconsistencies would lead to injustice.

6. Contrary, it is submitted by decree holder that the judgment debtor's contentions regarding the boundaries and ownership are irrelevant at the execution stage, as the decree has already attained finality. The learned counsel for the decree holder further submitted that the judgment debtor's objections are an attempt to delay execution and that such issues should have been raised during the trial stage. Since the decree clearly mandates possession of Gat No. 32/3 to be handed over to the decree holder, the execution must proceed as per law. The decree holder also emphasized that since alleged third party has not objected to the execution, the judgment debtor has no right to raise such objections on behalf of third party. Hence decree holder prayed to reject the application.
7. The decree holder has placed on record a certified copy of the judgment and decree in R.C.S No.45/2013, which clearly directs the judgment debtor to hand over possession of Gat No. 32/3, Situate at Village-Bhulgad, Tal-Ralegaon, Dist-Yavatmal to the decree holder. The decree holder has filed the present execution for possession of land Gat No.32/3. It is to be noted that, the objections raised by the judgment debtor pertain to boundaries and ownership, which are matters that should have been addressed during the trial proceedings and not at the execution stage. An executing court cannot go behind the decree and it's duty is to ensure its implementation as per the terms laid down in the judgment.
8. As the present execution is filed by decree holder as per the terms of judgment and decree passed in R.C.S.No.45/2013, therefore, there is no merit in the present application of judgment debtor. Hence in view of

above discussion application is liable to dismiss. Resultantly, I pass the following order

ORDER

1. The present application at Exh-34 is rejected.
2. The execution proceedings shall continue in accordance with law.

Date-21.02.2025

(D.R.Kulkarni)
Jt. Civil Judge Jr. Division,
Ralegaon.